



COMMONWEALTH OF MASSACHUSETTS
**Board of Registration
of
Hazardous Waste Site Cleanup Professionals**

**MINUTES
of
BOARD MEETING**

Held on
Mar. 13, 2009

Meeting Location: Arcadis G & M, Inc.
2 Executive Drive, Suite 303
Chelmsford, Mass.

Prepared by: A. Fierce

[Approved: April 14, 2009]

1. **Call to Order:** Chairperson Janine Commerford called the meeting to order at 1:50 p.m. The other Board members present were Gail Batchelder, Deborah Farnsworth, Kirk Franklin, Jack Guswa, Christophe Henry, Robert Luhrs, Gretchen Latowsky, Kelley Race, and Debra Stake. No members were absent. The LSP Board staff members present were Allan Fierce, Lynn Read, Brian Quinlan, Terry Wood, and Al Wyman. Also present were Wesley Stimpson and Matthew Hackman of the LSP Association.
2. **Announcements:** Mr. Fierce announced that on February 26, 2009, a bill to create a New Jersey Licensed Site Remediation Professional (LSRP) program was approved by the environment committees of both the New Jersey Senate and Assembly after a joint hearing.
3. **Agenda:** To accommodate Mr. Hackman, the Board members agreed to modify the draft agenda by moving what would have been item 8.H. forward to the next item (item 4) on the Agenda.
4. **LSPA's Request for Board Staff Assistance At an LSPA-Sponsored Workshop for Prospective Applicants:** Matthew Hackman, a member of the LSP Association (LSPA), and Mr. Stimpson, the Executive Director of the LSPA, explained that the LSPA is interested in presenting a seminar for prospective applicants on the topic of the LSP Board's application requirements and process. Mr. Hackman said there is considerable interest in having such a workshop and that, ever since he floated the idea, he keeps getting calls and occasional e-mails asking him when the workshop will be held. He said people are interested primarily because there is a great deal of uncertainty, stress, and

even fear that surrounds the Board's application process, some of which comes years before starting to fill out the forms.

Mr. Hackman, assisted by Mr. Stimpson, said that in some cases individuals who are just starting their careers have questions about the experience requirements that lead them to wonder whether the work they do is too narrow to qualify as RPE and, therefore, whether they needed to quit their jobs in order to join another company where they might be able to acquire the type of experience they need to become licensed. But they face a dilemma. On the one hand, they don't want to keep working for 4 or 5 more years in a job that might be found by the Board not to be RPE. On the other hand, they don't want to leave a job they enjoy that actually might qualify as RPE when they submit an Application in 3 or 4 years. For these individuals, Mr. Stimpson said, an applications workshop could be very helpful to the extent that it clarifies what experience does and does not qualify as RPE.

A workshop would also be very helpful to those who are just about to fill out the forms and apply for licensure, they said. Even though the Board's applications instructions are quite detailed (and are being revised), many stressful questions still arise. A frequent concern they have heard is how best to describe one's level of responsibility. Some prospective applicants have questions about the level of detail to include in the Forms, and how best to present the experience they have. Mr. Hackman said he has also spoken with prospective applicants who have questions about references and who they should list as references.

After explaining why the LSPA believes a workshop would be valuable, Mr. Hackman and Mr. Stimpson said that the LSPA has made a commitment to do it. They expect that perhaps 20 individuals would attend the first workshop. The LSPA would like to offer it again on a regular basis every year or two, depending on interest. The workshop would not be attended by LSPs; so the LSPA will not be asking the Board to approve it for LSP course credit. They would, however, like Board's staff to participate in presenting the workshop and answering attendees' questions.

The Board discussed whether it should allow the Board's staff to participate. At the conclusion of the discussion, it was the consensus of the Board that while it would be willing to work with the LSPA on this workshop, the Board would like the LSPA to clarify its request for staff participation by putting it in writing and describing more clearly what the content of the workshop would be and exactly what role the Board's staff would play and how much preparation time would be required of them.

Mr. Hackman said that he would be happy to do this and that it would be ready for discussion by the Board at its next meeting.

5. **Minutes:** The Board reviewed and offered minor corrections to the draft minutes of the meeting of the Board held on January 21, 2009. **A motion was made and seconded to approve the minutes as corrected. The motion was approved unanimously.**

6. **Reports from Quasi-Judicial Sessions:** Mr. Fierce requested and received the Board's unanimous consent to publish in the minutes of this meeting the following two reports from previous quasi-judicial sessions of the Board.

Final Order Re: Complaint 00C-04

On December 5, 2008, after conducting deliberations at quasi-judicial sessions on October 16 and November 6, 2008, the Board issued a Final Order in disciplinary matter 00C-04. In this Final Order, the Board suspended the Respondent LSP's license for a period of 6 months.

This matter stems from a Complaint filed with the Board by MassDEP in 2000. After an investigation, the Board issued an Order To Show Cause in 2003. In February 2006 an Administrative Magistrate at the Division of Administrative Law Appeals held an adjudicatory hearing. On April 11, 2008, the Magistrate provided the Board with a recommended decision. The Board's final findings of fact and rulings of law were issued on July 28, 2008. The Final Order issued by the Board on December 5 incorporates those findings and rulings and sanctions the LSP with a 6-month license suspension beginning on January 4, 2009.¹

Two Board members, Mr. Franklin and Ms. Stake, served on the Complaint Review Team and, therefore, did not participate in the Board's deliberations in this matter.

The non-recused Board members who participated in deliberations and signed the Final Order were as follows: Ms. Batchelder, Ms. Commerford, Ms. Farnsworth, Ms. Latowsky, Mr. Luhrs, and Ms. Race.

Throughout this discussion, the Respondent LSP's name was kept confidential. Now that a Final Order has been issued, the LSP's name – Oliver Udemba – is being made public.

Final Order Re: Complaint 08C-04

At a quasi-judicial session held on December 5, 2008, two of the CRT members for Complaint 08C-04 (Ms. Commerford and Ms. Reid) presented the terms of a proposed agreement for discipline that, if approved, would resolve this Complaint prior to the presentation of a CRT report or the issuance of an Order To Show Cause.

The members of the Board who were present were as follows: Ms. Farnsworth, Mr. Franklin, Mr. Guswa, Mr. Henry, and Ms. Latowsky.

¹ In late December 2008 the LSP filed a complaint in the Superior Court seeking judicial review of the Board's final decision. On February 2, 2009, the court stayed the Board's license suspension order pending the outcome of the judicial review.

Ms. Stake was absent, as was the 3rd member of the CRT, Ms. Batchelder. Mr. Luhrs and Ms. Race were recused and left the room.

The CRT members briefly explained the possible violations being investigated at a single site by the CRT.

The CRT members further explained that they had interviewed the LSP and discussed the site at issue. Thereafter, the LSP and the CRT agreed jointly that, subject to the Board's approval, it would be appropriate at this early stage of this case to resolve it with an Administrative Consent Order ("ACO") that resulted in the LSP's license being suspended for a period of 6 months. Thus, both the CRT and the LSP were recommending that the Board approve an agreement for discipline in this form.

The CRT members present explained that, although they had yet to conclude their investigation or prepare a CRT report, their investigation had revealed what they believed were sufficient grounds to support the resolution of this Complaint in this manner.

After answering questions about the proposed resolution, the CRT members were recused and left the room.

The five remaining Board members discussed the proposed agreement for discipline. At the conclusion of the discussion, they unanimously approved a motion to accept the general terms of the proposed agreement for discipline, i.e., a license suspension for a period of 6 months.

Mr. Henry was designated to act for the Board and sign an Administrative Consent Order containing this disciplinary outcome.

Thereafter an ACO was signed on 12/23/08. The 6-month suspension period began on 2/1/09.

Throughout this discussion, the Respondent LSP's name was kept confidential. Now that this matter has been concluded, the LSP's name – James Matz – is being made public.

7. **Decisions Regarding License Applicants:** The staff presented the following Application Dockets:

Docket No. 1: The applicant's name, company name, application number, and Application Review Panel recommendation were read into the record:

	<u>App. No.</u>	<u>ARP</u>	<u>Rec.</u>
Eric E. LaMontagne NSTAR Elec. & Gas	#4407	219	D

A motion was made and seconded to accept the recommendation from Application Review Panel #219, i.e., that the application submitted by Mr. LaMontagne be denied for the reasons set forth in the draft denial letter. The motion was approved unanimously.

Docket No. 2: The applicant's name, company name, application number, and Application Review Panel recommendation were read into the record:

		<u>App. No.</u>	<u>ARP</u>	<u>Rec.</u>
Craig A. Sasse	Triumvirate Env't'l, Inc.	#4574	220	A

Ms. Commerford was recused and left the room.

A motion was made and seconded that the Board accept the recommendation from Application Review Panel #220, i.e., that the application submitted by Mr. Sasse be approved and that he be found eligible to take the exam. The motion was approved unanimously.

Ms. Commerford returned and rejoined the meeting.

8. License Renewal Applications:

A. Renewal Dockets. The staff presented the following License Renewal Dockets:

Renewal Docket #1

License Renewal

Renewal Date: Jan. 30, 2009

Have met all requirements for renewal.

New Renewal Date: Jan. 30, 2012

- | | |
|-----------------------------|-------|
| 1. David G. Billo | #1978 |
| 2. James B. Connolly | #7416 |
| 3. Paul E. Feshbach-Meriney | #9755 |
| 4. T. Lawrence Hineline | #2950 |
| 5. Donna H. Pallister | #7669 |
| 6. Amy A. Roth | #2509 |
| 7. Lewis S. Streeter | #6466 |

Renewal Docket #2

Request for 90-day Extension

Renewal Date: Jan. 30, 2009

Qualifies for and is requesting a 90-day extension.

Extended Renewal Date: April 30, 2009

- | | |
|-------------------|-------|
| 1. Kurt E. Klages | #7770 |
|-------------------|-------|

Renewal Docket #3

License Renewal

Renewal Date: April. 30, 2009

Have met all requirements for renewal.

New Renewal Date: April. 30, 2012

- | | |
|------------------------|-------|
| 1. David J. Hazebrouck | #7903 |
| 2. Andrew D. Walker | #3117 |

A motion was made and seconded to renew to licenses of the LSPs on Renewal Dockets #1 and #3 for a three-year period ending on the dates indicated and to grant a 90-day extension to the LSP on Renewal Docket #2. The motion was approved unanimously.

B. Other Renewal-related Matters. Mr. Fierce reported that no waiver requests had been received since the previous meeting, and there were no other renewal-related matters.

9. Other Licensing-Related Matters:

A. New Panel Assignments and Scheduling. The following Board members were assigned to Application Review Panels:

ARP #221: Ms. Commerford, Mr. Henry, and Ms. Race.

ARP #222: Ms. Farnsworth, Mr. Guswa, and Ms. Latowsky.

B. Appeals Status Report. Ms. Wood reported that there are no pending appeals regarding the Board's denial of a license application.

C. Inactive Status Report. Mr. Fierce reported that 5 LSPs remain on Inactive Status, and there have been no status changes in the past months.

D. LSPs Whose Licenses Lapsed for Failure to Renew. Mr. Fierce announced that the following LSP did not renew her licenses, which lapsed on the date indicated:
On 1/30/09:

- Rosanne M. Joyce (#6643)

E. Deceased. The staff announced that LSP Douglas M. Corey passed away on 12/17/08.

F. Total Number of Active and Inactive LSPs. Mr. Fierce reported that the total number of Active LSPs as of the date of this meeting was 546.

G. Revisions to Application Forms. At the January meeting, the Board appointed three members to a new Applications Committee – Mr. Henry (chair), Ms. Latowsky, and

Ms. Stake. The function of the Committee is to coordinate revisions to the Application forms. On behalf of the Committee, Ms. Latowsky announced that the deadline for Board members to submit comments on the staff's draft, revised Application questions for Form 2, Form 3, and the Reference Form had been extended to the end of March.

10. **Revised Records Retention Schedule.** Mr. Fierce stated that he had placed in the members Packets a memo explaining why the Board needs a revised records retention schedule. In essence, he said, a revised schedule with retention periods of 10 years or less will serve to mitigate a burgeoning records storage problem by allowing records to be scanned and stored on CDs rather than in paper format. Under the Board's current records retention schedule, most records must be retained in paper format for 15 years before they can be scanned and destroyed. The draft revised records retention schedule proposed by staff is as follows:

Retention Period:

- (a) LSP Board applicant and licensee files: Retain 10 years after application is denied or license ends.
- (b) LSP Board Disciplinary Complaint Files: Retain 10 years after file is closed.
- (c) LSP Board Licensing Denial Appeal Files: Retain 10 years after appeal is concluded.
- (d) LSP Board Litigation Files: Retain 6 years after litigation is concluded.
- (e) LSP Board Contract Files: Retain 6 years after contract expiration.
- (f) LSP Board Regulation Promulgation Files: Retain final accepted regulations and substantive support materials permanently; retain all other records 3 years.
- (g) LSP Board Meeting Files: Retain final minutes permanently; retain all other records 10 years.
- (h) LSP Board Continuing Education Course Files: Retain 10 years after Board's approval of course.
- (i) LSP Board Licensing examinations: Retain 3 years.
- (j) LSP Board Program Administration Records: Retain 3 years.

Mr. Fierce said that with this revised schedule, paper records could be scanned and destroyed at any time, so long as the CDs are kept for at least the scheduled retention period. In fact, he said, the Board would retain the CDs indefinitely.

After discussing the staff proposal, a motion was made and seconded to accept the staff proposal to revise the Board's records retention schedule. The motion was approved unanimously.

Mr. Fierce stated that the next step was to submit the new schedule to the Records Conservation Board for its review and approval.

11. **Examinations:**

- A. New Licensees.** The staff reported that the following approved applicants passed the licensing exam and are now LSPs:

	<u>Exam Date</u>
• Kenneth J. Gendron (#8815)	2/4/09
• John J. Niedzielski (#2208)	2/4/09
• Alexandra N. Riddle (#9857)	2/4/09

- B. Next LSP Exam.** The staff reported that the next exam administration is scheduled for March 26, 2009.

- C. Status Report – PC-based Administration.** Mr. Fierce reported that paper administration was used for the previous exam because Chris Borges, who is providing technical support on this project, is still working with the software developer to resolve one issue with the electronic administration.

12. Continuing Education Committee Report:

- A. Course and Conference Approval Requests.** Mr. Henry reported that the Committee had met earlier in the day and had the following course and conference recommendations to present to the full Board:

Sponsors: LSP Association and MassDEP

Course Title: *The MCP Audit 2009 – A Case Study Approach*

Credits Requested: 4 DEP Course / Technical credits; however, if the attendee has not completed the 1-hour pre-course assignment, then only 3 credits will be awarded (for the 3 in-class contact hours).

Committee Recommendation: **Conditionally Approve.** The Committee viewed this as a 4-hour / 4 credit course for which the Board's regulations would require 100% attendance to receive any credit. Therefore, the Committee recommended that the Board not approve the 3-credit (no homework) option. If the LSP is unable to provide proof of homework completion prior to attending the in-class portion, the Committee recommended that the Board require the Provider to grant no continuing education credits for the course.

Sponsor: Boston Bar Association

Course Title: *Managing Site Cleanup and Development Projects under Massachusetts' Emerging Vapor Intrusion Policies*

Credits Requested: 3.5 Regulatory credits

Committee Recommendation: **Approve.** (The LSPA has agreed to work with the BBA to notify those LSPs who attended this course last month and advise them of the availability of continuing education credits.)

Sponsor: Environmental Professionals' Organization of Connecticut (EPOC)

Course Title: Combining Engineered Contaminant Source Area Treatment Technologies with Monitored Natural Attenuation for Site Cleanup

Credits Requested: 8 Technical credits

Committee Recommendation: **Approve.**

Sponsor: Rutgers NJAES

Course Title: Practical Applications in Hydrogeology

Credits Requested: 28 Technical credits

Committee Recommendation: **Approve.**

Requestor: Sami Fam, LSP

Sponsor: Battelle

Conference Title: The Tenth International In Situ and On-Site Bioremediation Symposium

Dates and location: May 5 - 8, 2009, in Baltimore, Md.

Credits Requested: Conference credits (1 Technical credit for every 2 hours of attendance)

Committee Recommendation: **Approve.**

Sponsor: The Environmental Institute (TEI) at UMass-Amherst

Conference Title: International Conference on the Environmental Implications and Applications of Nanotechnology

Dates and location: June 9 - 11, 2009, at UMass-Amherst

Credits Requested: Conference credits (1 Technical credit for every 2 hours of attendance)

Committee Recommendation: **Approve.**

Sponsor: MassDEP

Course Title: Level II Audits of Activity and Use Limitations (AULs) – A Case Study Approach

Credits Requested: 2.0 DEP Course / Regulatory credits

Committee Recommendation: **Approve.**

A motion was made and seconded to accept the Committee's course and conference recommendations. The motion was approved unanimously.

- B. Petition of Marsha Berger.** The Committee reported that at the January meeting it had reviewed a letter from LSP Marcia Berger petitioning the Board to allow her to receive 6 continuing education credits for her attendance at the first day of a 4-day course (#1209) approved by the Board for 24 Technical credits. The course, Hydrogeology of Fractured Rock: Characterization, Monitoring, Assessment, and Remediation, had been offered in early December, and she had attended the entirety of the first day, which covered the basics of fractured rock hydrology including the movement of DNAPL through bedrock. Because of the \$500/day cost and the time pressures of her work, she did not enroll in the final 3 days of the course. At the conclusion of the course, the sponsor gave her an Attendance Certification Form on

which, because she had not attended at least 75% of the course, it awarded her 0 credits, as required by the Board's regulations at 309 CMR 3.09(7)(a). That regulation requires that an LSP attend at least 75% of any course greater than 4 hours to obtain any credit.

Although the Board's regulations at 309 CMR 2.12 (Petitions for Waivers) permit the Board to "waive any requirement" for "good cause shown," the Committee first discussed whether the first day of the course could stand on its own merits and was worthy of 6 credits. After discussion, the Continuing Education Coordinator was instructed contact the course provider to obtain additional information and report back at the next meeting.

At the Committee meeting earlier today, the Continuing Education Coordinator reported that the course provider believes the first day of the course could have stood alone as a separate course. After discussing this additional information, the Committee voted to recommend that the Board retroactively approve the first day as a 6-credit course in and of itself, but only for this one offering.

The Committee noted that it was not recommending approval of a waiver of any requirements pursuant to 309 CMR 3.09(7)(a). They said they did not believe it was appropriate to set a precedent allowing less than 75% attendance of any Board approved course, given that missed content in other Board-approved courses may be critical to understanding the entire content of those courses. The Committee agreed that, in the future, any subset of full days that can stand alone for credit within a multi-day course should be clearly demonstrated and approved as independent credits at the time the course approval request is made and reviewed by the Committee.

A motion was made and seconded to accept the Committee's recommendation with respect to Ms. Berger's petition. The motion was approved unanimously.

13. **Professional Conduct Committee:** Since all the Board members present at this meeting were also present at the Professional Conduct Committee meeting held earlier in the day, the Board agreed to forego a Committee report.
14. **Personnel, Budget, and Fees:** Mr. Fierce announced that 30-day letters were being sent to about 55 LSPs who had not paid the Annual Fee. Pursuant to the Board's regulations at 309 CMR 2.09, if an LSP does not pay the fee within this 30-day period, his/her license will be suspended for 90 days. During that 90-day period, payment of the fee will result in reinstatement of the license. However, non-payment at the end of the 90-day suspension period will result in loss of license.

The Board discussed whether an LSP who was experiencing economic hardship, perhaps due to a layoff, had any options other than to pay the Annual Fee in full prior to the end of the 90-day suspension period. This issue arises because the Board's regulation allowing waivers for "good cause shown" (309 CMR 2.12) states that under no circumstances shall

the Board approve a petition allowing “waiver of any fees.” Mr. Fierce and Ms. Commerford said that they would research this issue and report back at the next meeting.

15. **Status of Board Member Replacements by Governor:** Ms. Commerford stated that she had no news to report since the previous meeting.
16. **Other Business:** The Board and the staff discussed possible topics for an article in the next LSPA newsletter. The next deadline is at the end of March.
17. **Scheduling of Next Meeting:** The Board agreed to hold its next meeting on April 14, 2009. If space is available, it will be held in Peabody at the offices of Weston & Sampson. The following meeting will be held on May 27, 2009, at a location to be determined.
18. **Adjournment:** The meeting was adjourned at 2:47 p.m.